(3)

No. 09-859

Supreme Court, U.S.
FILED
FEB 26 2010
OFFICE OF THE CLERK

In The Supreme Court of the United States

WILLIAM M. WINDSOR,

Petitioner,

v.

MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CARL H. ANDERSON, JR.
Counsel of Record
HAWKINS & PARNELL, LLP
4000 SunTrust Plaza
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3243
Telephone: (404) 614-7400
Telecopier: (404) 614-7500
E-mail: canderson@hplegal.com

Counsel for Respondents Maid of the Mist Corporation and Maid of the Mist Steamboat Company, Ltd.

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether the district court properly denied William M. Windsor's motion for recusal [Doc. 361], motion to reopen the case [Doc. 362], motion for sanctions under FRCP 37 and the Court's inherent power [Doc. 363], motion for sanctions under FRCP 11 [Doc. 364], and motion for discovery [Doc. 374].

2. Whether the district court properly dismissed William M. Windsor's motion for reconsideration of the motion for discovery filed on June 8, 2009 [Doc. 410].

3. Whether the Court of Appeals for the Eleventh Circuit properly dismissed William M. Windsor's appeal under 11th Cir. R. 42-4 [Doc. 545].

4. Whether the Court of Appeals for the Eleventh Circuit properly denied William M. Windsor's motion for reconsideration.

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, the caption contains the names of all of the parties. Respondent Maid of the Mist Corporation is the parent corporation of Respondent Maid of the Mist Steamboat Company, Ltd., a Canadian corporation. Respondent Maid of the Mist Corporation does not have any parent company. No publicly held company owns 10% or more of the stock of Respondent Maid of the Mist Corporation or Respondent Maid of the Mist Steamboat Company, Ltd.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	vi
STATEMENT REGARDING RECORD CITATIONS	1
STATEMENT OF THE CASE	3
INTRODUCTION	3
STATEMENT OF THE PROCEEDINGS BELOW	5
1. THE UNDERLYING ACTION – 1:06-CV-00714-ODE	5
2. THE CONVERTED MISCELLANEOUS ACTION – 1:09-CV-01543-WSD	11
3. THE INDEPENDENT ACTION – DOCKET NO. 09-CV-02027-WSD	14
4. WINDSOR'S OTHER ACTIONS	17
REASONS WHY THE PETITION SHOULD BE DENIED	18
THIS CASE DOES NOT PRESENT ANY REMARKABLE ISSUES OF VITAL IMPORTANCE TO ALL CITIZENS; RATHER, IT INVOLVES A RECALCITRANT LITIGANT	18

TABLE OF CONTENTS – Continued

Page

1. THE DISTRICT COURT PROPERLY DENIED WILLIAM M. WINDSOR'S MOTION FOR RECUSAL [DOC. 361], MOTION TO REOPEN THE CASE [DOC. 362], MOTION FOR SANCTIONS UNDER FRCP 37 AND THE COURT'S INHERENT POWER [DOC. 363], MOTION FOR SANCTIONS UNDER FRCP 11 [DOC. 364], AND MOTION FOR DISCOVERY [DOC. 374] 20

WINDSOR'S MOTION FOR RECUSAL 20

WINDSOR'S MOTION TO REOPEN 21

WINDSOR'S MOTION FOR SANCTIONS UNDER FRCP 37 AND THE COURT'S INHERENT POWER 26

WINDSOR'S MOTION FOR SANCTIONS UNDER FRCP 11 28

WINDSOR'S MOTION FOR DISCOVERY 31

2. THE DISTRICT COURT PROPERLY DISMISSED WILLIAM M. WINDSOR'S MOTION FOR RECONSIDERATION OF THE MOTION FOR DISCOVERY FILED ON JUNE 8, 2009 [DOC. 410] 32

3. THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT PROPERLY DISMISSED WILLIAM M. WINDSOR'S APPEAL UNDER 11TH CIR. R. 42-4 33

TABLE OF CONTENTS – Continued

Page

4. THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT PROPERLY DENIED WILLIAM M. WINDSOR'S MOTION FOR RECONSIDERATION 35

CONCLUSION..... 35

TABLE OF AUTHORITIES

Page

CASES

Barber v. Miller, 146 F.3d 707 (9th Cir. 1998).....31

Brickwood Contractors, Inc. v. Datanet Eng'g., Inc., 369 F.3d 385 (4th Cir. 2004) 29, 30

Bryan v. Murphy, 246 F. Supp. 2d 1256 (N.D. Ga. 2003) 33

Byrne v. Nezhat, 261 F.3d 1075 (11th Cir. 2001) 20

Chambers v. Nasco, Inc., 501 U.S. 32 (1991).....27

Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298 (11th Cir. 2009) 27

Florida Ass'n of Rehab. Facilities, Inc. v. State of Florida Dep't of Health and Rehabilitative Servs., 225 F.3d 1208 (11th Cir. 2000).....32

Gulf Coast Bldg. and Supply Co. v. Int'l Bhd. of Elec. Workers, Local No. 480, AFL-CIO, 460 F.2d 105 (5th Cir. 1972) 22

Hall v. State of Alabama, 700 F.2d 1333 (11th Cir. 1983).....26

In re Pennie & Edmunds, LLP, 323 F.3d 86 (2d Cir. 2003).....30

In re Sunshine Jr. Stores, 456 F.3d 1291 (11th Cir. 2006).....27

In re Walker, 532 F.3d 1304 (11th Cir. 2008).....30, 31

Jersawitz v. People TV, 71 F. Supp. 2d 1330 (N.D. Ga. 1999) 33

Klapprott v. United States, 335 U.S. 601 (1949) 26

TABLE OF AUTHORITIES – Continued

Page

Liteky v. United States, 510 U.S. 540 (1994) 20

Lockard v. Equifax, Inc., 163 F.3d 1259 (11th Cir. 1998) 32

Mandel v. Bradley, 432 U.S. 173, 97 S. Ct. 2238, 53 L. Ed. 2d 199 (1977) 9

Moore v. Estelle, 526 F.2d 690 (5th Cir. 1976) 1

O'Neal v. Kennamer, 958 F.2d 1044 (11th Cir. 1992) 32, 33

Pres. Endangered Areas of Cobb's History, Inc. v. United States Army Corps of Eng'rs, 916 F. Supp. 1557 (N.D. Ga. 1995) 33

Price v. Hawaii, 789 F. Supp. 330 (D. Haw. 1992) 28, 30

Region 8 Forest Serv. Timber Purchasers Council v. Alcock, 993 F.2d 800 (11th Cir. 1993) 32

Ridder v. Springfield, 109 F.3d 288 (6th Cir. 1997) 30

Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980) 27

Simon v. Navon, 116 F.3d 1 (1st Cir. 1997) 23

Sloss Indus. Corp. v. Eurisol, 488 F.3d 922 (11th Cir. 2007) 23

Smith v. Hildebrand, 244 Fed. Appx. 288 (11th Cir. 2007) 20

Toole v. Baxter Healthcare Corp., 235 F.3d 1307 (11th Cir. 2000) 24

TABLE OF AUTHORITIES – Continued

Page

Tucker v. National Linen Service Corp., 200 F.2d 858 (5th Cir. 1953) 1

Wilson v. Aderhold, 89 F.2d 903 (5th Cir. 1937) 9

United States v. Glover, 179 F.3d 1300 (11th Cir. 1999) 1

United States v. One Million Four Hundred Forty-Nine Thousand Four Hundred Seventy-Three Dollars and Thirty-Two Cents ($1,449,473.32) in United States Currency, 152 Fed. Appx. 911 (11th Cir. 2005) 22

STATUTES

28 U.S.C. § 144 ..... 20, 21

28 U.S.C. § 455 ..... 20, 21

28 U.S.C. § 2072 34

O.C.G.A. § 13-6-11 ..... 5, 6, 18

RULES

Supreme Court Rule 10 19

Supreme Court Rule 15 3

Supreme Court Rule 29.6 ii

5th Cir. R. 42.2 34

11th Cir. R. 42-4 ..... 9, 19, 33, 34

FRAP 47 33

FRAP 47(a)(1) 33, 34

TABLE OF AUTHORITIES – Continued

Page

FRCP 5 29
FRCP 11 ..... *passim*
FRCP 11(c)(2) 29
FRCP 37 ..... 8, 20, 26
FRCP 60 ..... 21, 25
FRCP 60(b) 21, 23, 25, 26
FRCP 60(b)(1) 23, 24
FRCP 60(b)(1)-(3) 22
FRCP 60(b)(1)-(5) 26
FRCP 60(b)(1)-(6) 21
FRCP 60(b)(2) 24
FRCP 60(b)(3) 25
FRCP 60(b)(4) 25
FRCP 60(b)(5) 25
FRCP 60(b)(6) 25, 26
FRCP 60(c) 22
FRCP 60(c)(1) 22
FRCP 60(d) 11
FRE 201(d) 1
LR 37.1, NDGa. 27
LR 37.1(A), NDGa 27
LR 37.1(B), NDGa 26

TABLE OF AUTHORITIES – Continued

Page

LR 83.1(F)(2)(a), NDGa. 9, 10

Rule 9011 of the Bankruptcy Code 30

STATEMENT REGARDING RECORD CITATIONS

Civil Action No.: 1:06-cv-00714-ODE may be referred to as the "Underlying Action", which was styled "Maid of the Mist Corporation, et al. v. Alcatraz Media, Inc., et al." The Underlying Action is the subject of this petition. These Respondents will refer to filings in the Underlying Action as (Under.-Docket-No.-[Item Number]) [R-[Volume Number]-[Item Number]] or where applicable (Under.-Docket-No.-[Item Number]) [R-[Volume Number]-[Item Number]-[Page Number]].[1]

Civil Action No.: 1:09-cv-01543-WSD may be referred to as the "Miscellaneous Action", which was also styled "Maid of the Mist Corporation, et al. v. Alcatraz Media, Inc., et al." These Respondents will refer to filings in the Miscellaneous Action as (Misc.-Docket-No.-[Item Number]) [R-[Volume Number]-[Item Number]] or where applicable (Misc.-Docket-No.-[Item Number]) [R-[Volume Number]-[Item Number]-[Page Number]].

---

[1] *See United States v. Glover*, 179 F.3d 1300, 1302 n.5 (11th Cir. 1999) ("A court may take judicial notice of its own records and the records of inferior courts."). It is well-established that the Court may, for "a proper understanding of protracted litigation . . . draw upon the records in all of the preceding cases," taking judicial notice of other court proceedings, both federal and state, involving the same parties. *Moore v. Estelle*, 526 F.2d 690 (5th Cir. 1976) (*citing Tucker v. National Linen Service Corp.*, 200 F.2d 858, 861-62 (5th Cir. 1953). *See also* FRE 201(d) ("A court shall take judicial notice if requested by a party and supplied with the necessary information.").

Civil Action No.: 1:09-cv-02027-WSD may be referred to as the "Independent Action". These Respondents will refer to filings in the Independent Action as (Ind.-Docket-No.-[Item Number]) [R-[Volume Number]-[Item Number]] or where applicable (Ind.-Docket-No.-[Item Number]) [R-[Volume Number]-[Item Number]-[Page Number]].

Maid of the Mist Corporation ("Corporation") and Maid of the Mist Steamboat Company, Ltd. ("Steamboat") may be collectively referred to as "Maid". Alcatraz Media, Inc. ("AMI"), and Alcatraz Media, LLC ("AML"), may be referred to collectively as "Alcatraz". Finally, unless otherwise noted, the term "Respondents" will include Maid of the Mist Corporation and Maid of the Mist Steamboat Company, Ltd.

Maid will use the abbreviation "FRCP" when referring to the "Federal Rules of Civil Procedure". Maid will use the abbreviation "FRAP" when referring to the "Federal Rules of Appellate Procedure". And finally Maid will use the abbreviation "FRE" when referring to the "Federal Rules of Evidence".

When referring to the Appendix to the Petition for Writ of Certiorari, Maid will use the abbreviation "Pet.-App.-p.-[ ]".

STATEMENT OF THE CASE

COME NOW CORPORATION and **STEAMBOAT**, Respondents, and, under Supreme Court Rule 15, hereby file their Brief in Opposition to the Petition for Writ of Certiorari filed by William M. Windsor ("Windsor") and show the Court as follows:

INTRODUCTION

This case arose from a successful, but ordinary claim for tortious interference with business relations claim against Windsor,[2] AMI, and AML that wound up in Georgia because that is where they could be found. Windsor does not grasp that he lost the underlying case before Judge Evans, that the Eleventh Circuit affirmed her order granting summary judgment and a permanent injunction, and that he has not met any of the criteria for post-judgment (let alone post-mandate) relief.

Windsor's crusade involves collaterally attacking the final judgment[3] in the Underlying Action by making a series of redundant, duplicative, vexatious,

---

[2] Windsor was a manager of AML and AMI, who directly participated in the tortious conduct. ((*See* Under.-Docket-No.-251-5) ("*Defendant William Windsor ("Windsor") is the father of Alcatraz's owner and participates in the management of Alcatraz.*")).

[3] Windsor suggests that he is seeking relief from the December 9, 2008 Consent Final Order and Judgment (Under.-Docket-No.-354), but he is actually seeking relief from the August 8, 2007 Order (Under.-Docket-No.-251).

and frivolous motions in which he spouts the same baseless allegations and weaves an ever more complex paranoia-driven web of conspiracies against him. For example, his vendetta has spawned three Georgia federal-court matters – 1:06-CV-00714-ODE (the Underlying Action); 1:09-CV-01543-WSD (the Miscellaneous Action); and 1:09-CV-02027-WSD (the Independent Action) – one in New York state-court matter (Supreme Court of Albany County, State of New York, Index No. 009808/2009 ("NY Proceeding")) and one Washington, D.C., federal-court matter (1:10-cv-00197-RJL ("DC Action")).[4] Since Windsor launched his feud on April 24, 2009, he has made hundreds of filings.

Although Windsor agreed not to appeal the December 9, 2008 Consent Final Order and Judgment, he is incapable of accepting the truth because the truth does not comport with his world-view of himself. Apparently, at least in his own mind, he could not be the same person who testified that he sold consumers worthless vouchers as part of his campaign to injure Maid. It is time that this Court put pay to his machinations and his scurrilous, scandalous, and irresponsible allegations in meritless filings against Maid, its counsel, Maid's witnesses, and those in the judiciary that have been unfortunate enough to have been assigned matters involving

---

[4] On February 17, 2010, the district court entered an opinion and order dismissing the same and referring the matter back to the Underlying Action Court for a possible contempt proceeding. (DC-Docket-Nos.-8-9).

him. He has frittered away judicial resources and inflicted needless costs and expenses on the victims of his activities, which include not only those consumers whom he defrauded, but also Maid.

STATEMENT OF THE PROCEEDINGS BELOW

1. THE UNDERLYING ACTION – 1:06-CV-00714-ODE

On August 8, 2007, the district court granted Maid's motion for summary judgment on its claim for tortious interference with business relations, granted Maid a permanent injunction against the sale of vouchers or e-tickets for rides on Maid's boats at Niagara Falls by AML and AMI and Windsor (collectively, "Defendants"), and found Defendants liable for attorney's fees and expenses under O.C.G.A. § 13-6-11 as a matter of law. (*See* Under.-Docket-No.-251). Further, the district court granted summary judgment to Maid on all four of Alcatraz's counterclaims. (*See Id.*).

On October 16, 2007, the district clerk entered judgment on the district court's August 8, 2007 order. (*See* Under.-Docket-No.-281).

On December 3, 2007, the district court awarded Maid attorney's fees and expenses pursuant to O.C.G.A. § 13-6-11 in the amount of $421,773.84 (Under.-Docket-No.-325), and the clerk entered judgment that same day (Under.-Docket-No.-327).

Alcatraz and Windsor appealed those judgments to the United States Court of Appeals for the Eleventh Circuit. (*See* Under.-Docket-Nos.-290;-291;-292;-293;-328;-329). Those appeals included appeals of the district court's discovery rulings. (*See*, *e.g.*, Under.-Docket-Nos.-254;-256).

On December 26, 2007, the district court granted the parties' Consent Motion for Stay, in which Defendants agreed to pay $446,671.26 into the registry of the Court as a supersedeas bond. (*See* Under.-Docket-No.-334).

On September 19, 2008, the Eleventh Circuit affirmed the district court's granting of summary judgment to Maid on its claim for tortious interference with business operations and the district court's issuance of a permanent injunction against Defendants. The Eleventh Circuit also affirmed the district court's granting of summary judgment in Maid's favor on Alcatraz's counterclaims and concluded that Maid was entitled to recover attorney's fees and expenses for its successful tortious interference claim under O.C.G.A. § 13-6-11. In addition, the Eleventh Circuit found that the district court properly determined that Maid's hourly rates were reasonable, but vacated and remanded to the district court for determination of

the amount to award Maid's attorney's fees and expenses. (*See* Under.-Docket-No.-344).[5]

On October 28, 2008, the district court issued an Order making the Eleventh Circuit's Mandate the judgment of this court. (*See* Under.-Docket-No.-346).

On November 20, 2008, Windsor signed a Consent Final Order and Judgment that the district court granted on December 9, 2008. (*See* Under.-Docket-No.-354). The Consent Final Order and Judgment disbursed the negotiated sum of $395,000.00 as attorney's fees and expenses to Maid. (*See Id.*).[6] The Consent Final Order and Judgment provided: "The case is hereby closed all issues having been decided. . . . No appeals shall be taken from this Judgment, and the parties waive all rights to appeal." (*Id.*, p. 4).[7]

---

[5] Windsor did not attempt to appeal the Eleventh Circuit's order to this Court, and the time for doing so has long since expired.

[6] This award covers a fraction of the attorney's fees and expenses that Maid incurred in the matters involving Windsor. Those attorney's fees and expenses continue to mount as part of Windsor's continuing vendetta against Maid for protecting its customers from his very lucrative depredations.

[7] Windsor represents in one of his earlier briefs that his "promise was not to appeal the summary judgment to the Supreme Court. (Doc.354-Pg.4.) [Under.-Docket-No.-354-p.-4.]" (Brief of Appellant, p. 9) (Appeal Docket No. 09-14735-DD). This statement does not conform to the actual language of that document. It is a misrepresentation. This example is typical of the shenanigans that Windsor employs.

On April 24, 2009, Windsor began an onslaught of filings in Civil Action No.: 1:06-CV-0714-ODE, attempting to resuscitate a CLOSED case in which he had signed a Consent Final Order and Judgment over five months earlier (Under.-Docket-No.-354). Windsor began with his Motion for Recusal of Judge Evans (Under.-Docket-No.-361) and Motion to Reopen Case (Under.-Docket-No.-362), then his Motion for Sanctions Against Plaintiffs and Counsel under FRCP 37 (Under.-Docket-No.-363), his Motion for Sanctions Against Plaintiffs and counsel under FRCP 11 (Under.-Docket-No.-364), and his Motion for Discovery (Under.-Docket-No.-374).

On May 22, 2009, the district court issued an Order denying the above motions and dismissing Windsor's Motion for Discovery (Under.-Docket-No.-374) as moot. (*See* Under.-Docket-No.-390) (Pet.-App.-p.-8).

On June 15, 2009, Windsor filed a Notice of Appeal with respect to the district court's May 22, 2009 Order (Under.-Docket-No.-390). (*See* Under.-Docket-No.-418).

On or about August 17, 2009, Windsor filed his brief with the Eleventh Circuit in Appeal No. 09-13086-DD.

On September 9, 2009, the Eleventh Circuit dismissed Windsor's appeal *sua sponte* "AS FRIVOLOUS"

under 11th Cir. R. 42-4 (Appeal No. 09-13086-DD). (Under.-Docket-No.-545) (Pet.-App.-p.-4).[8]

On October 20, 2009, the Eleventh Circuit denied Windsor's Motion for Reconsideration, filed on September 15, 2009 (Pet.-App.-p.-6).

On December 22, 2009, the district court entered an order enjoining Windsor from filing additional papers in the Underlying Action and filing new actions arising from the same facts against Maid. (Under.-Docket-No.-723). In that order, the district court wrote:

> The Court concludes that the questions raised by Windsor's Verified Complaint of Professional Misconduct are unsupported and unsubstantiated by any credible evidence, and thus terminates its inquiry into Plaintiffs' attorneys' conduct, as it may pursuant to [LR 83.1(F)(2)(a), NDGa.]. Windsor

---

[8] Under 11th Cir. R. 42-4, a frivolous appeal is one "entirely without merit." Such a dismissal is a summary action. There is no material distinction between a summary affirmance and a summary dismissal because the district court is not required to proceed in a particular way following the summary action. *Wilson v. Aderhold*, 89 F.2d 903, 904 (5th Cir. 1937). Without doubt a summary affirmance or dismissal is a judgment on the merits, preventing "lower courts from coming to opposite conclusions on the precise issues presented and necessarily decided by those actions." *Mandel v. Bradley*, 432 U.S. 173, 176, 97 S. Ct. 2238, 53 L. Ed. 2d 199 (1977) (*per curiam*). Most importantly, "summary actions . . . should not be understood as breaking new ground but as applying principles established by prior decisions to the particular facts involved." *Id.* (emphasis added).

> uses the Verified Complaint of Professional Misconduct to aim his oft-repeated, caustic remarks at Plaintiffs' attorneys, the undersigned, and various members of the federal judiciary in Atlanta. Unsubstantiated invective aside, Windsor's complaints of misconduct have been raised, addressed, and denied on their merits repeatedly-by this Court and others. Employing the discretion granted by [LR 83.1(F)(2)(a), NDGa.], the Court terminates its inquiry into the conduct of Plaintiffs' attorneys and refuses to refer this matter to the State Disciplinary Board of the State Bar of Georgia. Windsor's Verified Complaint of Professional Misconduct [Doc. 474] is DISMISSED.

(Under.-Docket-No.-723-pp.-14-15).

On January 5, 2010, the district court permitted Windsor to file a notice of appeal for the December 22, 2009 order. That appeal received docket no. 10-10139-A.

In the meantime, Windsor has filed a petition for writ of certiorari as to the Eleventh Circuit's *sua sponte* dismissal of his earlier appeal with this Court.[9]

---

[9] In his petition for writ of certiorari, Windsor wrote:

> After learning that there is ***no civil lawsuit allowed for perjury***, and after none of the authorities responded, the Petitioner filed a lawsuit against

(Continued on following page)

The petition has received docket no. 09-859.[10]

2. THE CONVERTED MISCELLANEOUS ACTION – 1:09-CV-01543-WSD

On May 20, 2009, Windsor attempted to have Judge Evans served with a subpoena for a deposition, which had a return date of June 16, 2009.

On June 3, 2009, the Clerk opened a miscellaneous file to deal with Judge Evans' emergency motion to quash subpoena. (*See* Misc.-Docket-No.-1-1). The Clerk assigned the file miscellaneous action number 1:09-MI-00220. Judge Duffey received the assignment of the Miscellaneous Action.

> Judge Evans, the Plaintiffs, and their attorneys under [FRCP] 60(d) for fraud upon the court and RICO.

Petition for Writ of Certiorari (09-859), p. 17 (emphasis supplied). This refers to the Independent Action and shows that Windsor was aware that he had no claim, but pursued it anyway in an attempt to inflict more harm on Maid. The Independent Action is nothing but a collateral attack on the judgment in the Underlying Action and relates to alleged perjury and other supposed misdoings in the Underlying Action for which Windsor admittedly has no cause of action. Yet, he has proceeded to consume judicial resources in his vendetta and inflict needless costs and expenses on those who dared to stand up to him in an effort to protect their customers from his and/or AML and AMI's depredations.

[10] Windsor has also filed an action in the Supreme Court of New York, Albany County, Civil Action Number 9809-09, against Maid and some of its officers, among others, relating to the litigation in the Underlying Action.

On June 8, 2009, the Court in the Miscellaneous Action stayed the matter to permit Windsor sufficient time to respond to the Motion to Quash Subpoena. (Misc.-Docket-No.-4).

On June 10, 2009, Windsor filed a Motion to Disqualify Attorneys Hawkins and Parnell, LLP, Carl H. Anderson, Jr., Sarah L. Bright, Phillips Lytle, LLP, and Marc W. Brown. (Misc.-Docket-No.-9).

On June 10, 2009, the Clerk re-assigned the case from a miscellaneous proceeding with the file number – 1:09-MI-00220-WSD – to a civil action with the file number – 1:09-CV-01543-WSD.

On June 10, 2009, Windsor filed a Motion for Hearing regarding his Motion to Disqualify Attorneys. (Misc.-Docket-No.-11).

On June 15, 2009, Windsor filed an Emergency Motion for Conference (Misc.-Docket-No.-13).

Maid and Judge Evans timely responded to Windsor's various motions. (Misc.-Docket-Nos.-28;-31).

On June 18, 2009, Windsor filed a Motion for Reconsideration or Revision of the Order Staying Case. (Misc.-Docket-No.-15).

On June 18, 2009, Windsor also filed a Motion to Disqualify Judge Duffey. (Misc.-Docket-No.-17).

On June 30, 2009, the Court in the Miscellaneous Action issued an Order and Opinion that granted Judge

Evans' Motion to Quash Subpoena. (Misc.-Docket-No.-32-2). It denied as moot Windsor's various pending motions.

On the same day, the clerk entered a judgment. (Misc.-Docket-No.-33).

On July 10, 2009, Windsor filed a Motion for Reconsideration of Opinion and Order to Quash Subpoena and Judgment to Dismiss This Action and Memorandum of Law in Support Thereof. (Misc.-Docket-No.-34-1).

On July 10, 2009, Windsor also filed a Motion for Change of Venue and Memorandum of Law in Support Thereof. (Misc.-Docket-No.-36).

On July 22, 2009, Judge Evans through the United States Attorney's Office filed a Response in Opposition to Windsor's Motion for Reconsideration of Opinion and Order to Quash Subpoena and Judgment to Dismiss This Action. (Misc.-Docket-No.-38).

On July 22, 2009, Judge Evans, through the United States Attorney's Office, also filed a Response in Opposition to Windsor's Motion for Change of Venue. (Misc.-Docket-No.-39).

On July 23, 2009, Maid filed its Motion for Joinder in the Response of Judge Evans to Windsor's Motion for Reconsideration of Opinion and Order to Quash Subpoena and Judgment to Dismiss This Action. (Misc.-Docket-No.-40).

On July 23, 2009, Maid also filed its Motion for Joinder in the Response of Judge Evans to Windsor's Motion for Change of Venue. (Misc.-Docket-No.-41).

On September 3, 2009, the Court issued an Order denying Windsor's Motion for Reconsideration. (Misc.-Docket-No.-42).

On September 15, 2009, Windsor filed a Notice of Appeal, in which he appealed the order granting Judge Evans' Motion to Quash Subpoena and the order denying his Motion for Reconsideration. (Misc.-Docket-No.-44). That appeal received docket no. 09-14735-DD.

3. THE INDEPENDENT ACTION – DOCKET NO. 09-CV-02027-WSD

On July 27, 2009, Windsor filed Civil Action No.: 1:09-CV-02027-WSD entitled, "Verified Independent Action in Equity to Remedy Fraud Upon the Court, Independent Equitable Action for Relief from a Final Judgment, Complaint for Declaratory Judgment, Injunctive Relief, and Other Relief" (Ind.-Docket-No.-1).

That same day, Windsor filed a Motion to Approve Service of Process on Canadian Parties (Ind.-Docket-No.-3) and a Motion for Waiver of Representation by Counsel and Motion to Allow Alcatraz Media, LLC and Alcatraz Media, Inc. to Assign All Rights in Civil Action No.: 1:06-CV-0714-ODE to Plaintiff (Ind.-Docket-No.-7).

On July 28, 2009, Windsor filed a Motion for Temporary Restraining Order and Interlocutory Injunction (Ind.-Docket-No.-11), a Motion for Change of Venue (Ind.-Docket-No.-15), and a Motion to Recuse Judge William S. Duffey (Ind.-Docket-No.-17).

On July 30, 2009, the district court issued an Order denying the above motions and staying all further activity in the case except as provided in the Order. (*See* Ind.-Docket-No.-22). The Order specifically made clear that Windsor's Motion for Temporary Restraining Order and Interlocutory Injunction (Ind.-Docket-No.-11) would be separately addressed: "Windsor's Motion for Temporary Restraining Order and Interlocutory Injunction [Docket No. 11] will be heard on July 30, 2009." (Ind.-Docket-No.-22-p.-1).

Later that day, the district court held a hearing on Windsor's Motion for Temporary Restraining Order and Interlocutory Injunction (Ind.-Docket-No.-11). (*See* Minute Entry for Motion Hearing held on July 30, 2009 (Ind.-Docket-No.-31)).

At such hearing, the district court denied Windsor's Motion for Temporary Restraining Order and Interlocutory Injunction. (Ind.-Docket-No.-31).

On August 3, 2009, Windsor filed a Motion for Leave to file Notice of Appeal to the Eleventh Circuit of "the order in this action issued on the 30th day of July." (Ind.-Docket-No.-35(Exhibit-"B")-p.-1). The Notice of Appeal stated that "Notice is hereby given that Plaintiff William M. Windsor in the above-named case hereby appeals to the United States Court of

Appeals for the Eleventh Circuit from the order in this action issued on the 30th day of July [sic]." Windsor's Notice of Appeal referred to the district court's July 30, 2009 Order (Ind.-Docket-No.-22). (*See* Ind.-Docket-No.-35).

On August 4, 2009, the district court issued a written Order denying Windsor's Motion for TRO and Interlocutory Injunction (Ind.-Docket-No.-11). (*See* Ind.-Docket-No.-32).

On August 5, 2009, the district court (by docket entry only) granted Windsor's Motion for Leave to file Notice of Appeal (Ind.-Docket-No.-35).

Windsor's Notice of Appeal with respect to the district court's July 30, 2009 Order was filed that same day. (*See* Ind.-Docket-No.-37).

On August 18, 2009, Windsor wrote the district court clerk asking that Docket No. 37 be modified to reflect his intent to appeal not only Docket No. 22, the July 30, 2009 Order, but also Docket No. 32, the August 4, 2009 Order. *See* Windsor's Motion for Reconsideration, Exhibit 3.

On August 18, 2009, Windsor had the option to file a timely separate notice of appeal for Docket No. 32, the August 4, 2009 Order, but chose not to do so.

On September 8, 2009, the Eleventh Circuit dismissed Windsor's appeal *sua sponte* for lack of jurisdiction.

On September 15, 2009, Windsor filed a Motion for Reconsideration of Order Dated September 8, 2009.

The Eleventh Circuit partially granted and partially denied Windsor's motion for reconsideration and reinstated his appeal on November 20, 2009. Specifically, the Eleventh Circuit granted Windsor's motion for reconsideration as to the district court's oral order denying his motion for temporary restraining order and preliminary injunction. That appeal remains pending.

4. WINDSOR'S OTHER ACTIONS

Windsor has pursued many appeals across the three above-mentioned actions. He has filed thirteen appeals to the Eleventh Circuit, some of which remain pending. He has filed nine petitions for writ of mandamus in the Eleventh Circuit, some of which remain pending. And he has filed or attempted to file at least three petitions for writ of certiorari in this Court.

REASONS WHY THE PETITION SHOULD BE DENIED

THIS CASE DOES NOT PRESENT ANY REMARKABLE ISSUES OF VITAL IMPORTANCE TO ALL CITIZENS; RATHER, IT INVOLVES A RECALCITRANT LITIGANT.

On August 9, 2007, the district court entered summary judgment for Maid and against Windsor, AML, and AMI. (Under.-Docket-No.-251). The district court also entered a permanent injunction and an award of attorney's fees and expenses under O.C.G.A. § 13-6-11 against them. (*Id.*). Windsor, AML, and AMI appealed. On September 22, 2008, the Eleventh Circuit affirmed the summary judgment, permanent injunction, and the entitlement to attorney's fees and expenses, but not the amount of attorney's fees and expenses. (Under.-Docket-No.-344). Later, the parties negotiated a consent final order and judgment that included the payment of $395,000.00 in attorney's fees. (Under.-Docket-No.-354). Windsor signed the consent final order and judgment. (*Id.*).

On April 24, 2009, Windsor launched his new campaign against Maid, which led to this petition for writ of certiorari. (Under.-Docket-Nos.-361;-362;-363;-364;-374). The district court entered an order denying of Windsor's motions. (Under.-Docket-No.-390) (Pet.-App.-p.-8). Windsor appealed that order to the Eleventh Circuit Court of Appeals. (Under.-Docket-No.-418). On September, 9, 2009, the Eleventh Circuit

dismissed Windsor's appeal *sua sponte* "AS FRIVOLOUS" under 11th Cir. R. 42-4 (Appeal No. 09-13086-DD). (Under.-Docket-No.-545) (Pet.-App.-p.-4).

Notwithstanding Windsor's claims to the contrary, this is an ordinary case involving a claim for tortious interference with business relations under Georgia law and a permanent injunction that protects consumers from predatory pricing practices employed by AMI and AML as managed and directed by Windsor. This case has been thoroughly and thoughtfully examined by the district court and the Eleventh Circuit.

This case does not involve contrary decisions from different courts of appeals on an important question of federal law. There is no departure from the accepted and usual course of judicial proceedings that would warrant the exercise of this Court's supervisory power. There is no decisional split between courts of last resort and courts of appeal on an important federal question. And, finally, there is no important question of federal law that demands a decision from this Court.

There is nothing remarkable about this case (other than the vehemence of unsubstantiated and hateful invective of a recalcitrant, serial-filing litigant like Windsor). Windsor's petition does not meet the criteria under Supreme Court Rule 10 for certiorari review by this Court. As such, issuance of a writ of certiorari is not warranted, and the Court should deny Windsor's petition.

1. **The District Court Properly Denied William M. Windsor's Motion For Recusal [Doc. 361], Motion To Reopen The Case [Doc. 362], Motion For Sanctions Under FRCP 37 And The Court's Inherent Power [Doc. 363], Motion For Sanctions Under FRCP 11 [Doc. 364], And Motion For Discovery [Doc. 374].**

Windsor's motion for recusal

On May 22, 2009, the district court entered an order, in which it properly denied Windsor's motion for recusal under both 28 U.S.C. §§ 144 and 455. (Under.-Docket-No.-390). Windsor's motion cites numerous reasons why he believes that recusal is appropriate, all of which are based on prior rulings in this case in Maid's favor. The district court first examined recusal under 28 U.S.C. § 455. "Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). The Eleventh Circuit has also held that "prior adverse rulings do not provide a basis for holding that a court's impartiality is in doubt." *Smith v. Hildebrand*, 244 Fed. Appx. 288, 289 (11th Cir. 2007) (unpublished opinion) (*citing Byrne v. Nezhat*, 261 F.3d 1075, 1102-1103 (11th Cir. 2001). The district court found that Windsor's motion for recusal is based solely on the district court's prior rulings in favor of Maid on a variety of matters. Windsor failed to enumerate any meritorious reasons for anyone to doubt the impartiality of the district

court judge aside from a general disagreement with the district court's prior rulings.

In addition to the reasons already cited as to 28 U.S.C. § 455, the district court determined that Windsor's motion to recuse must be denied as untimely under 28 U.S.C. § 144, which requires that an affidavit claiming bias must be filed "not less than ten days before the beginning of the term at which the proceeding is to be heard." Windsor waited until after the final judgment in this case was issued to file a motion to recuse, claiming that the delay was due to the fact that Windsor just received and reviewed Plaintiffs' "Canadian lease and New York license." (Under.-Docket-No.-361-pp.-19-20). The district court found that that contention did not relieve Windsor of his failure to file the motion to recuse near the beginning of the case, rather than after judgment. In addition, Section 144 explicitly requires the movant to file along with an affidavit, a certificate of counsel of record stating that the affidavit is made in good faith. 28 U.S.C. § 144. Windsor failed to file any certificate of counsel of record. The district court determined that on this basis alone, Windsor's motion under Section 144 failed.

Windsor's motion to reopen

Windsor has also filed a motion to reopen the case pursuant to FRCP 60(b)(1)-(6). (Under.-Docket-No.-362). FRCP 60 also provides that "A motion under [FRCP] 60(b) must be made within a reasonable time

– and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." FRCP 60(c)(1). Windsor did not specifically state which order or judgment he sought relief from, it appeared from his motion that he was seeking relief from the Court's August 7, 2007 order granting Plaintiffs summary judgment and a permanent injunction, and the clerk's subsequent entry of judgment pursuant to this order on October 16, 2007. (Under.-Docket-No.-281). Defendants appealed this order on September 7, 2007. (Under.-Docket-No.-254). Windsor filed his motion to reopen the case on April 24, 2009, over one and a half years after the entry of the district court's judgment.

Legal authority supports Maid's position that Windsor's motion is untimely as to any claim he has under FRCP 60(b)(1)-(3). FRCP 60(c) explicitly states that motions under FRCP 60(b)(1)-(3) must be brought within one year from the date of entry of the judgment or order or the date of the proceeding. FRCP 60(c). The Eleventh Circuit has held that this one-year limitation is not tolled by an appeal. *United States v. One Million Four Hundred Forty-Nine Thousand Four Hundred Seventy-Three Dollars and Thirty-Two Cents ($1,449,473.32) in United States Currency*, 152 Fed. Appx. 911, 912 (11th Cir. 2005) (unpublished opinion); *Gulf Coast Bldg. and Supply Co. v. Int'l Bhd. of Elec. Workers, Local, No. 480, AFL-CIO*, 460 F.2d 105, 108 (5th Cir. 1972). The First Circuit has found that this time limitation runs from the date of the entry of judgment in the district court,

even where such judgment is appealed, so long as the ruling on appeal does not alter that portion of the judgment that is the subject of the FRCP 60(b) motion. *See Simon v. Navon*, 116 F.3d 1, 3 (1st Cir. 1997). The fact that an attorney representing Windsor signed a jointly submitted Consent Final Order and Judgment, which was signed by the Court on December 9, 2008, also supports Maid's argument that Windsor's FRCP 60(b) motion is untimely. That Order explicitly states that the Order of the Court dated August 9, 2007 (Under.-Docket-No.-251) and the judgment of the Court dated October 16, 2007 (Under.-Docket-No.-281) would remain in full force and effect. (Under.-Docket-No.-353-pp.-1 -2).

Despite examining the timeliness issue, the district court determined that it was unnecessary to resolve the question of whether Windsor's FRCP 60(b) motion is timely, however, because his motion has no merit as to any of the claims he has brought under each subsection of FRCP 60(b). In order to obtain relief for excusable neglect under FRCP 60(b)(1), Windsor must show that he had a meritorious defense, that Maid would not be prejudiced if the order were vacated, and that he had a "good reason" for the neglect. *Sloss Indus. Corp. v. Eurisol*, 488 F.3d 922, 934 (11th Cir. 2007). Windsor claims that the relevant "mistakes" in the case are that the district court withheld relevant documents from Windsor and that counsel for co-defendant Alcatraz failed to file the deposition of Carolyn Ballard Bazzo. (Under.-Docket-No.-362-p.-4). Windsor's failure to file the

Bazzo deposition is not excusable, given that Maid twice requested that defendants file this deposition before the district court granted summary judgment. (Under.-Docket-Nos.-187;-233). Windsor's claim that the district court withheld evidence from him during discovery merely seeks to rehash a discovery issue that the district court had previously ruled on when it denied defendants' motion to compel, a decision with which Windsor disagrees. (Under.-Docket-No.-209). Therefore, the district court correctly found that Windsor's arguments under FRCP 60(b)(1) had no merit.

In order to obtain relief based on newly discovered evidence under FRCP 60(b)(2), Windsor must show the following elements: (1) the evidence is newly discovered since the trial; (2) the movant exercised due diligence in discovering the new evidence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence is such that a new trial would probably produce a new result. *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1316 (11th Cir. 2000). Windsor claims that the "new evidence" he has discovered since the judgment consists of two contracts that the district court allegedly "withheld" from Windsor, a fax Windsor received from Sandra Carlson on March 3, 2005, documents in the record that counsel for Alcatraz failed to point out to the district court, and declarations of Alcatraz employees and customers that counsel for Alcatraz failed to file with the district court.

Windsor's claims as to the two contracts again seek to rehash the merits of the district court's prior discovery orders, which is an inappropriate basis for a FRCP 60(b) motion. The declarations of Alcatraz employees and customers, and the fax that Windsor received on March 3, 2005, do not constitute "new evidence" that could not have been discovered with due diligence, as Windsor admitted that this evidence was in Windsor's possession before the district court's ruling on summary judgment, and it was simply not filed or emphasized to the district court.

Windsor's arguments under FRCP 60(b)(3), (4), and (5) are also without merit, as they constituted cursory allegations of dishonesty with no evidentiary support or contentions that the district court should revisit its prior rulings in this case. (Under.-Docket-No.-362-pp.-16-22). The district court determined that such arguments were not proper grounds for relief under FRCP 60.

In addition, Windsor's only argument that the judgment is void under FRCP 60(b)(4) is his contention that the district court judge did not act in a manner consistent with due process of law, that documents were "withheld" from him, and that Maid lied. (Under.-Docket-No.-362-p.-18). His allegations are cursory and, while they demonstrate Windsor's disagreement with the outcome of the case, they do not provide a basis for finding that the judgment is void.

Finally, Windsor is not entitled to relief under FRCP 60(b)(6), as his arguments under FRCP 60(b)(6)

merely rehash the arguments that he presents under the other five subsections of FRCP 60(b). Where a party's claim falls under one of the other enumerated sections listed in FRCP 60(b), a party has no recourse to FRCP 60(b)(6). *See Hall v. State of Alabama*, 700 F.2d 1333 (11th Cir. 1983) (stating "a court may not consider as reasons justifying relief under clause (6) any of the reasons justifying relief under the other five subsections of the rule") (*citing Klapprott v. United States*, 335 U.S. 601, 614-15 (1949)). Since Windsor has raised his claims under FRCP 60(b)(1)-(5), the district court concluded that Windsor has no recourse under FRCP 60(b)(6).

Windsor's motion for sanctions under FRCP 37 and the Court's inherent power

Windsor also filed a motion for sanctions against Maid and Maid's counsel under FRCP 37 and the Court's "inherent powers," based on Maid's alleged failure to make disclosures and failure to cooperate in discovery. (Under.-Docket-No.-363).

The Local Rules for the Northern District of Georgia provide that a motion to compel a disclosure or discovery under FRCP 37 "must be filed within the time remaining prior to the close of discovery, or, if longer, within ten (10) days after service of the disclosure or discovery response upon which the objection is based." LR 37.1(B), NDGa. Windsor's motion under FRCP 37, filed on April 27, 2009, does not comply with this requirement, as it was filed long

after the district court's final judgment. Nor does Windsor's motion comply with the formatting requirements of LR 37.1, NDGa., which require a motion to compel a disclosure or a response to discovery to quote verbatim each discovery request at issue, state the specific objection, the grounds for the objection, and cite authority and a discussion of reasons assigned as supporting the motion. LR 37.1(A), NDGa. The district court correctly rejected Windsor's motion for failure to adhere to the applicable rules.

"A court may impose sanctions for litigation misconduct under its inherent power." *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298 (11th Cir. 2009) (*citing Chambers v. Nasco, Inc.*, 501 U.S. 32, 43-44 (1991); *In re Sunshine Jr. Stores*, 456 F.3d 1291, 1304 (11th Cir. 2006)). This power, however, "must be exercised with restraint and discretion." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980). A court's inherent power to sanction for litigation misconduct is dependent upon finding bad faith. *Eagle Hosp. Physicians, LLC*, 561 F.3d at 1306.

The district court found that Windsor's arguments in support of his motion consist of cursory allegations regarding the discovery process. It also found that it had already heard and ruled on many of these allegations. The district court found that there was no evidence that Maid acted in bad faith in the course of this litigation, and, therefore, appropriately declined to use its inherent powers to sanction Maid.

Further, the district court held that Windsor's motion was too late.

Windsor's motion for sanctions under FRCP 11

Windsor also filed a motion for sanctions and a motion to dismiss under FRCP 11 against counsel for Maid for their allegedly false filings. Windsor filed this motion on April 27, 2009. (Under.-Docket-No.-364). In his motion, Windsor complains about a large number of Maid's filings, including the complaint, affidavits, responses to interrogatories, document productions, motions, and briefs.

The district court held that Windsor's motion entirely lacked substantive merit. (Under.-Docket-No.-390-p.-13).

The district court also determined that it must deny Windsor's motion for sanctions because it was untimely and because it failed to comply with FRCP 11's safe harbor requirements. "A motion for sanctions under [FRCP] 11 . . . should be denied when the moving party fails to act promptly." *Price v. Hawaii*, 789 F. Supp. 330, 335-36 (D. Haw. 1992). The Advisory Committee on the Rules commented as follows:

> Ordinarily the motion should be served promptly after the inappropriate paper is filed, and, if delayed too long, may be viewed as untimely . . . Given the "safe harbor" provisions . . . a party cannot delay serving its [FRCP] 11 motion until conclusion of the

> case (or judicial rejection of the offending contention).

FRCP 11 (Notes of Advisory Committee on Rules to 1993 Amendment). FRCP 11's "safe harbor" provision provides that:

> A motion for sanctions . . . must be served under [FRCP] 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets.

FRCP 11(c)(2). This rule requires that the party seeking sanctions "must serve the [FRCP] 11 motion on the opposing party at least twenty-one days before filing the motion with the district court, and sanctions may be sought only if the challenged pleading is not withdrawn or corrected within twenty-one days after service of the motion." *Brickwood Contractors, Inc. v. Datanet Eng'g., Inc.*, 369 F.3d 385, 389 (4th Cir. 2004).

Because of the safe harbor provision, several circuits have held that a district court cannot grant a motion for sanctions filed after the conclusion of the proceedings, because the opposing party is thereby deprived of a chance to cure or withdraw the offending filing. "[A] party cannot wait to seek sanctions until after the contention has been judicially disposed. A party must now serve a [FRCP] 11 motion on the allegedly offending party at least twenty-one days

prior to the conclusion of the case or judicial rejection of the offending contention." *Ridder v. Springfield*, 109 F.3d 288, 295 (6th Cir. 1997); *see also Brickwood Contractors, Inc.*, 369 F.3d at 389-90 (holding that a district court lacks authority to impose requested sanctions where the movant files a motion for sanctions after the close of proceedings); *In re Pennie & Edmunds, LLP*, 323 F.3d 86, 89, nn.1, 2 (2d Cir. 2003); *see also Price*, 789 F. Supp. at 335-36 (denying a motion for sanctions under FRCP 11 due to untimeliness where the motion was filed more than two years after the dismissal of the case, and after the dismissal was affirmed on appeal). In both *Brickwood* and *Ridder*, the Courts of Appeal held that a party's motion for FRCP 11 sanctions was untimely because it was filed after the entry of summary judgment and therefore deprived the allegedly offending party of its chance to withdraw or cure the offense. *Brickwood*, 369 F.3d at 390; *Ridder*, 109 F.3d at 297.

In a case involving a motion for sanctions under Rule 9011 of the Bankruptcy Code, the Eleventh Circuit agreed with the reasoning of these courts and held that "the service and filing of a motion for sanctions 'must occur prior to final judgment or judicial rejection of the offending' motion." *In re Walker*, 532 F.3d 1304, 1309 (11th Cir. 2008) (*quoting Ridder*, 109 F.3d at 297). In *Walker*, the Court upheld the district court's denial of a motion for sanctions because the offending motion, on which the motion for sanctions was based, had already been denied by the court

when the motion for sanctions was filed. 532 F.3d at 1308-1309.

Given this legal authority, the district court correctly found that that it lacked authority to grant Windsor's motion for sanctions under FRCP 11 because it was filed after the district court's entry of summary judgment and after that ruling was affirmed by the Eleventh Circuit Court of Appeals. Considering Windsor's motion on the merits would deprive Maid of the safe harbor provisions in FRCP 11 as they have had no opportunity to cure any of their allegedly sanctionable filings. Windsor states in his motion that "Mr. Anderson was long ago advised of Windsor's intent to file a Motion for Sanctions under [FRCP] 11," but an informal warning does not satisfy the safe harbor provision in FRCP 11. *See Barber v. Miller*, 146 F.3d 707, 710 (9th Cir. 1998) ("It would . . . wrench both the language and purpose of the amendment to the Rule to permit an informal warning to substitute for service of a motion.").

Accordingly, the district court properly denied Windsor's motion for sanctions under FRCP 11.

Windsor's motion for discovery

Windsor also filed a Motion for Discovery, whereby Windsor argues that he must be able to depose counsel for Maid in order to support his various pending motions before the Court. (Under.-Docket-No.-374). Since the district court denied Windsor's

motion to reopen the case, it aptly dismissed his motion for discovery as moot.

The district court properly decided each of Windsor's motions. None of them satisfies the criteria for granting certiorari review. None of them involved any alleged deprivation of constitutional rights. Rather each motion concerned unremarkable issues that do not warrant certiorari review.

2. The District Court Properly Dismissed William M. Windsor's Motion For Reconsideration Of The Motion For Discovery Filed On June 8, 2009 [Doc. 410].

Generally, the decision to grant a motion for reconsideration is committed to the sound discretion of the district court and will not be overturned on appeal absent an abuse of discretion. *Florida Ass'n of Rehab. Facilities, Inc. v. State of Florida Dep't of Health and Rehabilitative Servs.*, 225 F.3d 1208, 1216 (11th Cir. 2000) (*citing Region 8 Forest Serv. Timber Purchasers Council v. Alcock*, 993 F.2d 800, 806 (11th Cir. 1993)). Normally, motions for reconsideration should not be used to raise legal arguments which could and should have been made before the judgment was issued. *Lockard v. Equifax, Inc.*, 163 F.3d 1259, 1267 (11th Cir. 1998) (*citing O'Neal v. Kennamer*, 958 F.2d 1044, 1047 (11th Cir. 1992)). "Denial of a motion for reconsideration is especially soundly exercised when the party has failed to articulate any reason for the failure to raise the issue at an earlier

stage in the litigation." *Id.* (citation omitted). Traditionally, motions for reconsideration are to be filed only when "absolutely necessary," and reconsideration is only absolutely necessary where there is: "(1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact." *Bryan v. Murphy*, 246 F. Supp. 2d 1256, 1258-59 (N.D. Ga. 2003) (Martin, J.) (*citing Pres. Endangered Areas of Cobb's History, Inc. v. United States Army Corps of Eng'rs*, 916 F. Supp. 1557 (N.D. Ga. 1995) (O'Kelley, J.) and *Jersawitz v. People TV*, 71 F. Supp. 2d 1330 (N.D. Ga. 1999) (Moye, J.)) (additional citations omitted).

On July, 2, 2009, the district court issued an order denying Windsor's motion for reconsideration of the motion for discovery. (Under.-Docket-No.-437). The district held that there was no need for discovery. The district court properly decided Windsor's motion because he could not meet the standard for granting such a motion.

3. The Court Of Appeals For The Eleventh Circuit Properly Dismissed William M. Windsor's Appeal Under 11th Cir. R. 42-4.

The Eleventh Circuit has promulgated rules under FRAP 47, which provides therefor. Specifically FRAP 47(a)(1) provides:

> Each court of appeals acting by a majority of its judges in regular active service may, after

> giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with – but not duplicative of – Acts of Congress and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

FRAP 47(a)(1). Based on that authority, the Eleventh Circuit propounded 11th Cir. R. 42-4 "Frivolous Appeals", which states "[i]f it shall appear to the court at any time that an appeal is frivolous and entirely without merit, the appeal may be dismissed."[11]

On September 9, 2009, the Eleventh Circuit dismissed Windsor's appeal *sua sponte* "AS FRIVOLOUS" under 11th Cir. R. 42-4 (Appeal No. 09-13086-DD).

---

[11] This local rule is not unique. For example, 5th Cir. R. 42.2 is similar. This type of local rule is designed to expeditiously review and dispose of meritless appeals, to prevent the squandering of judicial resources, and to protect the public purse. That is the situation here. The Eleventh Circuit acted appropriately in dismissing Windsor's appeal as frivolous.

(Under.-Docket-No.-545). Based on the entirely-lacks-merit standard set forth in the local rule, the Eleventh Circuit properly dismissed the appeal. This action did not result in any constitutional deprivation as Windsor apparently contends.

4. The Court Of Appeals For The Eleventh Circuit Properly Denied William M. Windsor's Motion For Reconsideration.

The same standard for reconsideration applies in the district court and the Eleventh Circuit. Based on that standard, the Eleventh Circuit properly decided Windsor's motion because he could not meet the standard for granting such a motion for reconsideration.

CONCLUSION

Maid asks that this Court **DENY** Windsor's Petition for Writ of Certiorari because it fails to meet the criteria for certiorari review, it does not involve any issues of constitutional significance, it does not involve a split in decisional authority between courts of last resort or courts of appeal, and, ultimately, it is part of Windsor's campaign to inflict harm on Maid for successfully protecting itself and consumers from the fraudulent scheme that he implemented through Alcatraz.

WHEREFORE, Maid prays that:

(a) the Court **DENY** Windsor's Petition for Writ of Certiorari; and

(b) the Court grant such other and further relief as is just and equitable under the circumstances.

This 26th day of February, 2010.

CARL H. ANDERSON, JR.
Counsel of Record
HAWKINS & PARNELL, LLP
4000 SunTrust Plaza
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3243
Telephone: (404) 614-7400
Telecopier: (404) 614-7500
E-mail: canderson@hplegal.com

Counsel for Respondents
Maid of the Mist Corporation
and Maid of the Mist
Steamboat Company, Ltd.